

**SYNOPSIS OF CRIMINAL OPINIONS IN THE COURT OF APPEALS OF THE STATE  
OF MISSISSIPPI HANDED DOWN MAY 25, 2010**

***Johnson v. State***, No. 2008-KA-00576-COA (Miss.App. May 25, 2010)

**CRIME:** Shooting into a Dwelling

**SENTENCE:** 10 years

**COURT:** Rankin County Circuit Court

**TRIAL JUDGE:** Hon. William E. Chapman, III

**APPELLANT ATTORNEY:** Dan Hinchcliff

**APPELLEE ATTORNEY:** Deirdre McCrory

**DISTRICT ATTORNEY:** Michael Guest

**DISPOSITION:** Affirmed. Barnes, J., for the Court. King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Ishee, Roberts and Maxwell, JJ., Concur.

**ISSUES:** (1) Whether the element of “willfully” for the crime of shooting into a dwelling requires a specific intent, and (2) Whether the evidence was sufficient to support the verdict and not against the weight of the evidence.

**FACTS:** On May 22, 2005, Ken Aldridge arrived at a trailer on Lawrence Road in Rankin County to return his children to their mother, Tyana Taylor. Taylor lived in the trailer with several family members. When returning to his car, another vehicle drove up. Sergio Watson, approached Aldridge and said "give it up." Watson punched him in the face, while Marcus Divine struck Aldridge with a baseball bat. Meanwhile, a third man called "Cook," later identified as the appellant, Jason Johnson, (who is Watson's brother), came up with a rifle and aimed it at Aldridge. The three stole his hat, car keys, and \$80 in cash from his pocket. Aldridge claims he heard Taylor's mother standing near the front door, pleading to Johnson, "don't shoot," as the gun fired twice. The men then left. Taylor, her sister, and their mother all corroborated Aldridge's account. A bullet hole was found just to the right of the door, but no bullet was recovered. A spent .22 cartridge was found on the ground. Johnson told police that Watson had set up a drug deal with Aldridge, but the three had decided to rob Aldridge instead. In a second statement, Johnson said Divine had shot at Aldridge. At trial, Johnson stated that Aldridge was the individual who had shot the firearm. Divine tried to disarm Aldridge with the bat. Johnson stated that Aldridge dropped the gun and he grabbed it. As he tried to remove the clip, Aldridge grabbed at it and the gun accidentally fired. Johnson was acquitted of Counts I and II, armed robbery and aggravated assault with a bat, but he was convicted of Count III, shooting into a dwelling house.

**HELD:** Johnson claimed that he intended to shoot Aldridge, not the dwelling. However, this issue was not raised at trial so it is procedurally barred on appeal. Johnson did not make his "willfulness" argument in either his motion for a directed verdict at the close of the State's case-in-chief or in his post-trial motions. Johnson's post-trial motion was very generic. Notwithstanding the bar, the Court discussed the issue at length.

==> Shooting in a dwelling (§97-37-29) should be classified as a general intent crime. “The term ‘willfully,’ without more, indicates the person intended to do the unlawful bodily movements: that is, to shoot the firearm. There is no further language in the statute for an intent to do a further act or achieve another consequence, as there would be in a specific intent crime.”

==>“This Court maintains, in this issue of first impression, that the more logical interpretation of willfulness is to hold that sufficient intent is established even if the shooter does not have the intent to hit the building, but he knows the probable consequences of missing the target will be to strike the building.” §97-37-29 must be interpreted to mean Johnson did not need to have the specific intent to shoot into the trailer to be found guilty.

==>The State presented sufficient proof that Johnson shot a firearm into a dwelling house. The testimonies of two eyewitnesses showed Johnson willfully and unlawfully fired the weapon in the direction of the trailer and struck it. The proof also shows Johnson was aiming at Aldridge, who was standing in front of the trailer. A hole was found in the door of the trailer which had not been present before the shooting. Johnson merely testified that the eyewitnesses were lying.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63615.pdf>

**Nolan v. State**, No. 2008-KA-00564-COA (Miss.App. May 25, 2010)

**CRIME:** Manslaughter

**SENTENCE:** 7 years with 13 years PRS

**COURT:** Desoto County Circuit Court

**TRIAL JUDGE:** Hon. Robert P. Chamberlin

**APPELLANT ATTORNEY:** James D. Franks, Jr.

**APPELLEE ATTORNEY:** John R. Henry, Jr.

**DISTRICT ATTORNEY:** John W. Champion

**DISPOSITION:** Affirmed. Irving, J., for the Court. King, C.J., Lee and Myers, P.JJ., Griffis, Barnes, Ishee, Roberts and Maxwell, JJ., Concur.

**ISSUES:** (1) that the circuit court erred in refusing to grant a directed verdict, (2) that the verdict is against the overwhelming weight of the evidence, and (3) that the *M’Naghten* standard should be abandoned in Mississippi.

**FACTS:** On May 26, 2006, Clinton Wyatt Nolan called 911 after shooting his father, Donald Nolan, in the chest in Hernando. Donald, who also spoke to the 911 operator, died shortly thereafter. Nolan was indicted for heat-of-passion manslaughter. Nolan waived his right to a jury trial and asserted an insanity defense in a bench trial. The State entered into evidence written stipulations of fact and rested its case, reserving the right to call rebuttal witnesses. Nolan’s motion for a directed verdict was denied. Nolan called two psychiatrists and several friends of the family. Dr. Robert Hoehn had

treated Nolan since 1996. Dr. Hoehn stated that he had placed Nolan on several medications while Nolan was under his care. Finally, he prescribed Klonopin. The shooting occurred within twenty-four hours of taking the Klonopin. After the shooting, Dr. Hoehn diagnosed Nolan with depressive type shizoaffective disorder. As to Nolan's mental state at the time of the shooting, Dr. Hoehn testified, "I think he was delusional and psychotic, and I think, you know, that he wasn't in his right mind in terms of making decisions." Nolan also called Dr. Joseph C. Angelillo, an expert in forensic psychiatry who conducted an evaluation of Nolan a few weeks after the shooting. Dr. Angelillo concluded that Nolan did not understand the nature and quality of his actions on the night of the shooting. The State offered several rebuttal witnesses, including the officer who interviewed Nolan after the shooting and Dr. Criss Lott. Dr. Lott opined that Nolan was mentally ill at the time of the shooting but that his mental illness did not impact his ability to understand the nature and quality of his actions. the circuit court concluded that Nolan was sane at the time of the shooting and convicted him of heat-of-passion manslaughter.

**HELD:** Nolan argues that the State failed to prove that he was sane at the time of the killing. Nolan told the 911 dispatcher that he had "acted out of emotion" when he shot his father. The victim told 911 that Nolan "was having...problems," and that Nolan was having an episode because his medicine was messed up. The question of whether Nolan was sane at the time of the killing is a question of fact. Although Nolan offered expert testimony that he was insane at that time, the State offered rebuttal expert testimony that he was not. Obviously, the circuit judge accepted Dr. Lott's testimony on the question of Nolan's sanity. This was not error.

==> The record, however, does not support Nolan's conviction for heat-of-passion manslaughter, as the State did not offer any evidence establishing that Nolan acted in the heat of passion when he killed his father. Nolan's statement to 911 that he "acted out of emotion" when he killed his father is not sufficient to support a conviction for heat-of-passion manslaughter, as there is nothing in the record that suggests that Donald provoked Nolan by words or acts at the time of the shooting. The evidence was sufficient, however, to sustain a conviction for manslaughter pursuant §97-3-47 (which makes all killings, not designated under a specific code section, manslaughter when done without authority of law).

==> Finally, Nolan argued that the *M'Naghten* Rule should be abandoned. "We decline to address this issue, as this Court lacks authority to do so. It is the prerogative of our supreme court to determine when and if the *M'Naghten* Rule should be abandoned."

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDLList/..%5COpinions%5CCO58823.pdf>

*Nichols v. City of Madison, MS*, No. 2009-KM-01007-COA (Miss.App. May 25, 2010)

**CRIME:** Misdemeanor - DUI

**COURT:** Madison County Circuit Court

**TRIAL JUDGE:** Hon. William E. Chapman, III

**APPELLANT ATTORNEY:** Betty Slade Derossette, Wann Fredric Leonard, R. Scanlon Fraley  
**APPELLEE ATTORNEY:** John Hedglin

**DISPOSITION:** Appeal Dismissed. Barnes, J., For the Court. King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Ishee, Roberts and Maxwell, JJ., Concur.

**ISSUES:** Whether the COA had jurisdiction to hear an appeal which originated in municipal court.

**FACTS:** On March 7, 2008, Jarret Nichols entered a plea of nolo contendere with the Madison Municipal Court to First Offense DUI and careless driving. After a de novo trial in the County Court of Madison County, Nichols was found guilty of both charges, and a final judgment of conviction on the charges was entered on August 7, 2008. Nichols appealed the judgment to the Madison County Circuit Court, and on May 19, 2009, the circuit court affirmed his convictions. Nichols then again appealed his conviction claiming that the City failed to meet its burden of evidence.

**HELD:** §11-51-81 states that there shall be no appeal from the circuit court to the supreme court of any case which originated in a justice of the peace, municipal or police court that was appealed to the county court and then the circuit court unless there is a constitutional question. Nichols is not permitted a further appeal unless a constitutional issue is presented, and his appeal is specifically allowed by either the circuit judge or by a judge of the supreme court. Accordingly, Nichols's appeal is dismissed for lack of jurisdiction.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63152.pdf>

***Becker v. State***, No. 2009-CP-00055-COA (Miss.App. May 25, 2010)

**CRIME:** PCR - 2 Counts, Touching a child for lustful purposes

**SENTENCE:** 12 years for each count, to run concurrently, with 4 years suspended and 4 years PRS

**COURT:** Harrison County Circuit Court

**TRIAL JUDGE:** Hon. Roger T. Clark

**APPELLANT ATTORNEY:** Richard Becker (Pro Se)

**APPELLEE ATTORNEY:** John R. Henry, Jr.

**DISPOSITION:** Motion for Post-conviction Relief Denied. Barnes, J., for the Court: King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Ishee, Roberts and Maxwell, JJ., Concur.

**ISSUES:** (1) Two of his attorneys were ineffective for not requesting a competency hearing and did "nothing" but coerce him into pleading guilty, and (2) the trial court failed to conduct a competency hearing sua sponte.

**FACTS:** In August 2007, Richard Becker entered a plea of guilty to two of three counts of touching a child for lustful purposes when he occupied a position of trust as the victim's parent. The third

count was passed to the file. On September 25, 2007, Becker filed a motion to reconsider his sentence. The trial court denied the motion. On January 22, 2008, Becker moved to amend his motion to reconsider, claiming that at the time he entered his guilty plea he was suffering from "mental health problems due to the nature of the charge." This motion was also denied. The trial court found no evidence that Becker was mentally incompetent at the time he entered his guilty plea and denied the motion. On June 10, 2008, Becker filed a pro se motion for post-conviction relief in the trial court, claiming that two of his defense attorneys were ineffective and that the trial court erred in failing to conduct a sua sponte competency hearing. The trial court found, however, that Becker offered no evidence to support his allegations and denied his motion. Becker appealed.

**HELD:** The trial judge properly treated Becker's first motion as a motion to reconsider his sentence, not as a motion for post-conviction relief, since it was filed during the same term of court. However, Becker's motion to reconsider was filed several months after the end of the term of court in which Becker had been sentenced, as well as several months after the trial court had denied Becker's original motion to reconsider. It should have been treated as a PCR. The current PCR motion is therefore barred as a successive writ.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63181.pdf>

**Lewis v. State**, No. 2008-CP-01752-COA (Miss.App. May 25, 2010)

**CRIME:** PCR – Conspiracy to sell cocaine

**SENTENCE:** 20 years

**COURT:** Pike County Circuit Court

**TRIAL JUDGE:** Hon. Michael M. Taylor

**APPELLANT ATTORNEY:** Gary Lewis (Pro Se)

**APPELLEE ATTORNEY:** Glenn Watts

**DISPOSITION:** Dismissal of PCR affirmed. Myers, P.J., for the Court. Lee, P.J., Irving, Griffis, Barnes, Ishee, Roberts and Maxwell, JJ., Concur. King, C.J., Concurs in Result Only.

**ISSUES:** (1) his guilty plea was not voluntary or sufficient, (2) that he received ineffective assistance of counsel, and (3) that the circuit judge should have recused himself

**FACTS:** On January 6, 2004, Gary Lewis pled guilty to one count of conspiracy to sell cocaine. At the sentencing hearing, Lewis was sentenced on four other counts. He essentially received 45 years with the last 28 years of the total sentence suspended, with five years' post-release supervision. On January 17, 2008, Lewis filed a motion for post-conviction relief. The circuit court dismissed Lewis's motion without an evidentiary hearing. Lewis subsequently filed a motion for an out-of-time appeal, which the circuit court granted on September 29, 2008.

**HELD:** Although the circuit court addressed the merits of Lewis's motion in its order of dismissal,

Lewis's PCR was filed more than four years after the entry of his conviction and sentence. His claims are time barred. However, because the trial court must determine the existence of a factual basis for a guilty plea before accepting the plea, we shall address this issue notwithstanding the time bar. There is no requirement that Lewis must have subjectively known that either the conspiracy or the underlying crime of sale of cocaine was illegal to support a conviction for conspiracy. Looking at the entire record, there was a sufficient factual basis for the plea.

==>Lewis's claimed that the trial court failed to advise him of his right to appeal his sentence through a direct appeal. This claim is procedurally barred and is without merit. At the time of Lewis's plea, the law allowed a direct appeal of the sentence resulting from a guilty plea. However, a trial court is not required to inform the defendant of his right to direct appeal of his sentence after a guilty plea.

==>Lewis argued that the circuit judge who presided over his guilty plea was illegally appointed to the case after the original circuit judge recused himself and that the judge had a conflict of interest. Because nothing in the record suggests any merit to either of these claim, the Court found the recusal issue without merit, waived by failure to make a timely objection, and barred by the statute of limitations.

==>Lewis's claims of ineffective assistance are barred.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63163.pdf>

*Sayles v. State*, No. 2009-CP-00376-COA (Miss.App. May 25, 2010)

**CRIME:** PCR – Sale of Cocaine

**SENTENCE:** 25 years

**COURT:** Tunica County Circuit Court

**TRIAL JUDGE:** Hon. Kenneth L. Thomas

**APPELLANT ATTORNEY:** Oscar Sayles (Pro Se)

**APPELLEE ATTORNEY:** Laura Hogan Tedder

**DISPOSITION:** Denial of Motion for Post-conviction Relief Affirmed. Myers, P.J., for the Court. King, C.J., Lee, P.J., Irving, Griffis, Barnes, Ishee, Roberts and Maxwell, JJ., Concur.

**ISSUES:** (1) his plea of guilty was involuntary as it was induced by threats from his court-appointed counsel; (2) his legal counsel was constitutionally deficient; and (3) he was denied his right to a speedy trial.

**FACTS:** Oscar Sayles pled guilty to sale of cocaine. In exchange for the plea of guilty, the State recommend that Sayles receive a twenty-five-year sentence and that the State would not prosecute Sayles as a habitual offender and would not prosecute another pending criminal charge. Sayles later filed

a PCR motion. The circuit court denied Sayles's motion and he appealed.

**HELD:** Sayles contends that his guilty plea was involuntary because his legal counsel threatened him with an excessive habitual-offender sentence if he did not plead guilty, and that the "small amount of cocaine" involved would have been an important factor in the consideration of a "legal and fair sentence." Sayles faced 30 years w/o parole. It is immaterial that the amount of cocaine was small. Sayles failed to provide a transcript of the plea. Sayles failed to demonstrate that his decision to plead guilty was involuntary.

==>Sayles was not denied effective assistance of counsel. Sayles claimed his counsel was ineffective for failing to conduct a pretrial investigation and for not informing him that the weight of cocaine affected the sentence. Sayles failed to show some critical evidence that would have been discovered had it not been for his counsel's alleged omission. The amount of the cocaine was irrelevant.

==>Finally, Sayles's guilty plea waived any speedy trial claim.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63107.pdf>

**Edwards v. State**, No. 2009-CP-00108-COA (Miss.App. May 25, 2010)

**CRIME:** PCR – Sale of Cocaine

**SENTENCE:** 8 years with 2 suspended and 6 to serve and 2 years PRS

**COURT:** Claiborne County Circuit Court

**TRIAL JUDGE:** Hon. Lamar Pickard

**APPELLANT ATTORNEY:** Reginald Ladale Edwards (Pro Se)

**APPELLEE ATTORNEY:** Deirdre Mccrory

**DISPOSITION:** Denial of PCR Affirmed. Lee, P.J., for the Court. King, C.J., Myers, P.J., Irving, Griffis, Barnes, Ishee, Roberts and Maxwell, JJ., Concur.

**ISSUES:** (1) his guilty plea was invalid; (2) the trial court failed to advise him of his right to appeal; (3) the indictment was defective; (4) the trial court imposed an illegal sentence; (5) the trial court failed to file a complete record of the proceedings; and (6) his trial counsel was ineffective.

**FACTS:** On August 13, 2007, Reginald Ladale Edwards pled guilty to one count of sale of cocaine. On December 8, 2008, Edwards filed a motion for post-conviction relief. The trial court denied Edwards's request for relief and he appealed.

**HELD:** Edwards argues that his guilty plea was invalid because he did not admit his guilt and the trial court failed to advise him of his right to appeal. According to the plea colloquy, Edwards admitted several times that he was guilty of the sale of cocaine. There is no requirement to inform



a defendant of his right to appeal from a guilty plea. Edwards also argued that the State failed to prove the elements of sale of cocaine. However, a valid guilty plea waives all nonjurisdictional claims concerning defective indictments as well as any evidentiary issue.

==>Edward was not denied effective assistance of counsel. All of Edwards's assertions relate to issues previously discussed, namely the validity of the guilty plea and the right to appeal his sentence. Edwards has failed to meet his burden in proving any deficiency and any resulting prejudice to his defense as a result of the deficiency.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63124.pdf>

**Medlin v. State**, No. 2009-CP-00360-COA (Miss.App. May 25, 2010)

**CRIME:** PCR – Aggravated assault

**SENTENCE:** 20 years with 5 suspended

**COURT:** Marshall County Circuit Court

**TRIAL JUDGE:** Hon. Andrew K. Howorth

**APPELLANT ATTORNEY:** James Medlin (Pro Se)

**APPELLEE ATTORNEY:** Glenn Watts:

**DISPOSITION:** Denial of PCR affirmed. King, C.J., for the Court. Lee and Myers, P.JJ., Irving, Griffiths, Barnes, Ishee, Roberts and Maxwell, JJ., Concur.

**ISSUES:** Whether he was sentenced under the correct statute.

**FACTS:** On October 20, 2004, James Medlin was indicted for the aggravated assault of Bobby Neal Mannis. The indictment listed the charging statute as §97-3-7(3), which proscribed simple domestic violence. However, the body of the indictment charged, that Medlin "unlawfully, willfully and feloniously, purposely and knowingly cause[d] bodily injury to Bobby Neal Mannis, with a vehicle, a deadly weapon[,] by running over him one or [more] times, in violation of the provisions of section 97-3-7. On November 7, 2005, Medlin was convicted Medlin filed a "motion to clarify sentence" in the trial court on June 13, 2008. The trial court treated Medlin's motion as a motion for post-conviction relief. In that motion, Medlin alleged that his sentence was illegal because it exceeded the maximum penalty provided by law. Specifically, Medlin argued that he should have been sentenced pursuant to section 97-3-7(3), which provides a maximum sentence of ten years. The trial court found that Medlin's motion was without merit and denied the requested relief. Aggrieved, Medlin timely filed his notice of appeal.

**HELD:** The statute number referenced in the indictment is of no consequence because the court looks to the substance of the indictment to determine whether it sufficiently gave notice of the pending charges. Medlin's indictment charged him with the aggravated assault of Mannis with a deadly weapon – a car. It is clear that Medlin was charged with aggravated assault and not simple



domestic violence. The listing of section (3) as the charging statute was merely a scrivener's error. The substance of Medlin's indictment clearly charged him with aggravated assault under section 97-3-7(2), which provides a maximum penalty of 20 years. Because the trial court properly sentenced Medlin within the statutory guidelines, we find that Medlin's sentence is not illegal.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO62869.pdf>

***Davis v. State***, No. 2007-CP-00578-COA (Miss.App. May 25, 2010)

**CRIME:** PCR – Armed Robbery

**SENTENCE:** 15 years with 3 suspended and 3 on PRS

**Court:** Tunica County Circuit Court

**TRIAL JUDGE:** Hon. Kenneth L. Thomas

**APPELLANT ATTORNEY:** George Davis, Jr. (Pro Se)

**APPELLEE ATTORNEY:** Glenn Watts

**DISPOSITION:** Denial of petition for out of time appeal affirmed. Barnes, J., for the Court. King, C.J., Lee and Myers, P.JJ., Irving, Griffis, Ishee, Roberts and Maxwell, JJ., Concur.

**ISSUES:** (1) Whether the circuit court erred in failing to grant Davis's out-of-time appeal because he waived his right to a direct appeal, and (2) ineffective assistance of counsel related to this issue

**FACTS:** George Davis, Jr. was convicted of the armed robbery of the Sheraton Casino in Tunica County, MS in April of 2005. He and a co-defendant were accusing of taking approximately \$66,780 from a cashier at the casino. His case was severed from the co-defendant. The jury could not agree on the sentence, so the judge gave him 15 years with 2 suspended. June 27, 2005. After sentencing Davis signed an affidavit stating that he did not wish to appeal. On March 20, 2006, Davis filed a pro se "Petition For Out-of-Time Direct Appeal." Davis claimed his attorney erroneously informed him he would only have to serve 4 years. On January 10, 2007, the circuit court denied Davis's petition, noting that the time for perfecting a direct appeal had lapsed and that Davis had knowingly and voluntarily waived this right. The court found no evidence to support he was misled or coerced. Davis appealed March 20, 2007, but treated the appeal as a direct appeal of his conviction.

**HELD:** Procedurally, this appeal could not be considered a direct appeal of his conviction. The circuit court properly treated it as a PCR, as the circuit court would have had no authority under the MRAP to allow the filing of an out-of-time direct appeal approximately nine months after his conviction and sentence were entered. Davis also failed to provide any evidence of "good cause" for the appellate court to suspend the rules to allow a direct appeal.

==>Even though Davis's appeal of his PCR was untimely, it appears from the record he may not have been aware that the trial court had denied his petition. Accordingly, the appeal of the denial

of PCR was allowed as and his notice of appeal was filed within thirty days of the date he certainly received notice of the denial.

==>The circuit court did not err in finding Davis knowingly and voluntarily waived his right to a direct appeal. Davis's waiver was prepared with the assistance of his trial counsel. It was properly executed by both Davis and his counsel, notarized, and filed. There is no evidence in the record to show the waiver was in any way invalid. Davis could have revoked the waiver and perfected his appeal at any time prior to 30 days from the entry of judgment, pursuant to MRAP Rule 4(a), but there is no evidence that he made such an attempt. Instead, he waited until over 8 months to claim his waiver was invalid

==>Davis was not denied effective assistance of counsel. Davis does not provide any evidence that he was misinformed by his counsel regarding how much of his sentence he would have to serve, except for his own statements alleged in his petition and briefs. He did not allege with "specificity and detail" that his counsel was deficient. Davis did not present sufficient proof to warrant an evidentiary hearing.

To read the full opinion, click here:

<http://www.mssc.state.ms.us/Images/HDList/..%5COpinions%5CCO63759.pdf>

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